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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

vs.

WALKER RIVER IRRIGATION DISTRICT, a corporation, et al.,

Defendants.

MINERAL COUNTY,

Proposed-Plaintiff-Intervenor

vs.

WALKER RIVER IRRIGATION DISTRICT a corporation, et al.

Proposed Defendants.

IN EQUITY NO. C-125-ECR
Subproceeding: C-125-C
3:73-CV-0128-ECR-RAM

MINERAL COUNTY REPLY TO WALKER RIVER IRRIGATION DISTRICT'S RESPONSE TO MINERAL COUNTY'S SERVICE REPORT

COMES NOW, Mineral County, Nevada, by and through its counsel, Simeon Herskovits of Advocates for Community and Environment, and Cheri Emm-Smith, local counsel, and replies to the Walker River Irrigation District's ("WRID's") Response to Mineral County's Service Report (Doc. No. 488) as follows:

INTRODUCTION

Most of WRID's Response to Mineral County's Service Report consists of a selective recapitulation of some of the history of this action designed to cast Mineral County's extensive service efforts in as pejorative a light as possible. To rebalance the slanted perspective presented in this history and fill in some of the background ignored by WRID, Mineral County provides some additional background information below.

In addition, WRID's Response raises two arguments over service that has already been completed and ratified by the Court. First, WRID argues that Mineral County should be required to re-serve every previously served defendant with updated information concerning the briefing schedule. As explained in greater detail below, this argument is incorrect because defendants who have been served either: (a) have filed notices of appearance, and thus have been receiving updated information as the Court has issued it; or (b) have failed to file notices of appearance, and consequently have been deemed by the Court to have notice of subsequent orders.

Second, WRID argues that Mineral County should be required to substitute and serve all successors-in-interest to defendants who have been served but whose water rights interests have been transferred since service. As explained in greater detail below, WRID's argument misapprehends the applicable law. Federal Rule of Civil Procedure 25 governs the question of substitution in this action, and pursuant to Rule 25 there clearly is no requirement for Mineral County to substitute or serve any successors-in-interest except in the narrow set of instances

where the transfer is the result of a Defendant's death and a proper suggestion of death has been filed with the Court and served on the parties.

I. BACKGROUND

The selective recapitulation of some of the history of this action and Mineral County's service efforts that make up the lengthy background section of WRID's Response to Mineral County's Service Report is presented so as to cast the most negative light possible on Mineral County's efforts, and also so as to sidestep the well-known history of intentional resistance to and evasion of Mineral County's service efforts by upstream water rights claimants. Much of this history is not particularly germane, or helpful, to the Court's resolution of the remaining outstanding service issues, but both perspectives are reflected in past filings in this action and in reports and editorials published in the principal newspaper for the upstream portion of the Walker River basin, the Mason Valley News, throughout the pendency of this action.

WRID's insinuation that Mineral County has been derelict in its duty to complete service since the commencement of the now-defunct mediation process fails to acknowledge some of the most basic aspects of the procedural context of this action and the C-125-B action. First, the Mediation Order contemplated that service efforts would continue despite the stay of other components of these actions with a view towards service being completed "as soon as possible." *Order Governing Mediation Process*, at 2 (Doc. No. 430). As has been previously, and repeatedly, explained to both the Court and the other parties, Mineral County did not have the resources to meaningfully advance its service efforts while pursuing the mediation process in good faith. Thus, so long as the mediation process, which was sought and initiated by WRID, was going on Mineral County could either devote its extremely limited resources to advancing the mediation process or to substantial service efforts, but it did not have the resources to do both

simultaneously. In the interests of trying to achieve an expeditious, comprehensive resolution of the claims in both the C-125-B and C-125-C actions Mineral County devoted its resources to that end during the duration of the mediation process from spring of 2003 until late 2006.

As also has been explained, in the midst of the mediation process Mineral County changed from the legal counsel that had struggled and experienced such difficulty with service for so long to the undersigned counsel. As we previously have informed the Court and the other parties, since the end of the mediation process Mineral County's new counsel has conducted a comprehensive, systematic review of the status of service and the identification of parties in the caption. Given the history of confusion and disagreement concerning Mineral County's service efforts over the years, conducting such a review was absolutely essential to Mineral County's new legal counsel's ability to satisfactorily and efficiently complete service once-and-for-all. This review was necessary to bring the Court and the parties up to date on the status of service in the 125-B action and clarify the limited outstanding service issues that must be addressed. Only as a result of this in-depth review can the Court and the parties now proceed to resolve those issues with assurance and efficiency. Thus, far from doing "absolutely nothing," once the mediation process had come to a close and it was reasonably possible for Mineral County, the County and its new counsel proceeded to undertake and complete a time-consuming review of previous service efforts and the status of remaining un-served water rights claimants, which materially advances the parties' and the Court's goal of soundly resolving remaining service issues and having service completed.

WRID's derogatory reference to the passage of time during service efforts since the commencement of this action also fails to acknowledge that lengthy time periods for the completion of service in complex actions like this one (e.g., water rights adjudications) are not

uncommon and that in the 125-B action, seven years elapsed between the commencement of the action and the commencement of concrete service efforts. The 125-B action has been pending longer than the 125-C action and is only now approaching completion of service; and the joint plaintiffs in the 125-B action include the United States with its vastly superior greater resources than those of an impoverished county like Mineral County.

In reality, as the Court has more than once acknowledged, Mineral County has overcome enormous obstacles and accomplished commendable results in successfully completing the vast majority of service in this action. At this point in the process all that remains is to clarify the limited set of claimants who remain to be served and resolve some ancillary issues, so that Mineral County has clear direction that will allow it to complete service over the next few months. WRID's denigration of Mineral County's earlier struggles with service does nothing to advance these objectives.

On October 25, 1994, Mineral County filed a Motion and Petition to Intervene in the C-125-B case. (C-125-B Doc. Nos. 31-32) On January 3, 1995, the Court created subfile C-125-C, or 3:73-CV-128-ECR-RAM. *Minutes of the Court*, at 1 (Doc. No. 1). On February 9, 1995, the Court ordered Mineral County to file revised Intervention Documents and to serve these Intervention Documents on all claimants to the waters of the Walker River and its tributaries pursuant to Federal Rule of Civil Procedure 4. *Order Requiring Service of and Establishing Briefing Schedule Regarding the Motion to Intervene of Mineral County*, ¶¶ 2, 3 (Doc. No. 19). Mineral County filed its *Amended Complaint in Intervention* on March 10, 1995. (Doc. No. 20). On September 29, 1995, Judge Reed clarified the February 9 Order and the set of documents that Mineral County was required to serve on claimants to the waters of the Walker River and its tributaries. *Order*, at 2 (Doc. No. 48). The September 29, 1995, Order also held that persons or

entities who are served or who waive personal service, but do not appear and respond will be deemed to have notice of all subsequent filings with the Court. *Id*. at 4.

Identifying all claimants to waters of the Walker River and its tributaries has been a daunting task. Mineral County compiled the list of claimants to the waters of the Walker River and its tributaries from county recorders' offices, records of the Federal Water Master, State Engineer databases, and the records of WRID. The sheer number of claimants combined with the fact that few of the records and databases consulted or lists received were initially accurate, made the task exceptionally time-consuming, expensive, and difficult. It took several years for the parties to reach consensus on the proper list of persons to be served, but on January 12, 1998, the Court issued a caption that has been the basis of Mineral County's service efforts since that date. On May 13, 1998, the Court issued an Order indicating that the list of defendants had been agreed upon. *Order*, at 2 (Doc. No. 196).

Mineral County has dedicated enormous time and resources to the task of serving all claimants to the Walker River and its tributaries as directed by the Court. The difficulties and costs associated with this effort were substantially increased by the interference and evasion of upstream claimants, which led to complications and delays that otherwise could have been avoided. *See Points and Authorities in Opposition to WRID's Motion to Vacate Schedule and in Support of Counter Motion for Sanctions* (Doc. No. 31); *see also Mineral County's Points and Authorities in Reply to WRID's Response and Request for Hearing* (Doc. No. 42). To date, Mineral County has served well over a thousand claimants and the list of un-served claimants at this time is relatively short. Although the process has taken significant time and resources and has met with obstacles, the Court has more than once commended Mineral County's efforts, and has ratified service on most of the claimants listed in the January 12, 1998 caption or their

substituted successors in interest. *Order*, at 2 (Doc. No. 210); *Order Concerning Status of Service on Defendants,* (Doc. No. 327); *Order* (Doc. No. 397); *Order* (Doc. No. 414).

As detailed in the Service Report, Mineral County has updated this list of unserved potential defendants to reflect current ownership and is prepared to begin service on these individuals once the Court approves that list. At this stage, service in the 125-C case is relatively close to complete, and Mineral County is prepared to wrap up remaining limited service issues in the next few months so that the Court and parties can move on to the merits of this case.

II. DISCUSSION

A. The Burden To Keep Apprised Of Scheduling Changes Ordered By The Court Properly Is Borne By Defendants Who Have Been Served; Nonetheless Mineral County Does Not Object To A Supplemental Publication Of The Briefing Schedule Ordered By The Court When Service Is Complete

WRID argues that Mineral County should be ordered to re-serve those defendants who already have been served with papers containing updated information concerning the as yet un-rescheduled briefing schedule. *See* WRID Response at 14-15 (Doc. No. 488). This argument does not hold up to reasoned consideration. To begin with, one of the paramount purposes of requiring defendants who have been served to file notices of appearance is to ensure that defendants will receive future filings and orders of the Court, which obviates the need for any special renewed personal service on them by the Plaintiff. Further, WRID's suggestion is inconsistent with the Court's February 9, 1995 Order, which held, as courts routinely do, that: "Persons, corporations, institutions, associations, or other entities properly served with Mineral County's Intervention Documents who do not appear and respond to Mineral County's Motion to Intervene shall nevertheless be deemed to have notice of subsequent orders of the Court with respect to answers or other responses to the proposed complaint-in-intervention or responses to

any motion for preliminary injunctive relief filed and served by Mineral County." *Order*, at 4-5 (Doc. No. 19).

Despite the basic function of defendants' entry of appearance and the Court's ruling concerning defendants who have been served but have failed to enter an appearance, WRID argues that Mineral County should be required to, in effect, perform service on previously served defendants all over again because a number of years have passed since this action was commenced, or since service was effected on various defendants, or since the Court last vacated the briefing schedule until service was completed. This is an extraordinary suggestion that would imply the need for a much more burdensome and inefficient procedure to be followed in any of the many types of complex cases that involve numerous parties and the elapse of significant time between the filing of the complaint and the resolution of the merits. Apart from its own subjective assertions WRID does not offer any authority to support the proposition that the Court ought to follow this uncommon, if not unprecedented, procedure.

In point of fact, it cannot reasonably be contested that defendants who have entered notices of appearance have received and will continue to receive notice of Court orders in this case, including the Court's order setting a briefing schedule once service is complete. Moreover, pursuant to the Court's earlier ruling, defendants who have been served but have failed to enter appearances have properly been deemed by the Court to have notice of all subsequent orders of the Court. In effect, then WRID is requesting the Court to reverse its own perfectly proper and sensible previous ruling concerning served defendants who have failed to enter an appearance, and to disregard the basic function of defendants' entry of appearance. There is no reason to believe that defendants who have entered notices of appearance will not receive notice of the Court's eventual order setting a briefing schedule, and thus there does not appear to be any

genuine due process concern, or interest, that would justify the imposition of such a burdensome new set of delays and expenses in this proceeding. To do so would be contrary to the interests of justice and judicial economy, and highly prejudicial to Mineral County. Imposing additional delay and expense on Mineral County seems to be the only genuine interest that would be served by adopting WRID's position.

B. Rule 25 Governs The Substitution Of Successors-In-Interest And Pursuant To Rule 25 Mineral County Cannot Properly Be Required To Substitute And Serve Successors-In-Interest Except In Certain Limited Circumstances

WRID loosely alludes to the possible application of either Federal Rule of Civil Procedure 17 or Federal Rule of Civil Procedure 25 to this issue and asserts that under either of these rules Mineral County "must" be required to substitute and serve all successors in interest to any Defendant who was served but whose interest subsequently has been transferred. WRID's characterization of the applicable law is inaccurate, and its interpretation of that law is incorrect. To begin with, Rule 25 clearly governs the question of substitution and service on successors-in-interest in this action. Mineral County commenced this action on October 25, 1994, by filing its Motion and Petition to Intervene. The latest the action properly could be considered to have been initiated is on January 3, 1995, when the Court formally opened the C-125-C subfile. Accordingly, there can be no serious dispute that this action has been pending since at least the latter date, and thus Rule 25 controls. *See In re Bernal*, 207 F.3d 595, 597-598 (9th Cir. 2000); *Kraebel v. New York City Department of Housing Preservation and Development*, 2002 WL 14364, at *4 (S.D.N.Y. 2002); *PP Inc. v. McGuire*, 509 F.Supp. 1079, 1083 (D.N.J. 1981) ("When an interest is transferred after suit has been initiated . . . Rule 25 governs."). More particularly, subsection (c) of Rule 25 plainly governs the handling of successors-in-interest that are the result of an inter vivos transfer between a defendant and some other person or entity,

while subsection (a) of Rule 25 governs the handling of successors-in-interest stemming from transfers due to death. Under neither section is there any kind of blanket burden, as WRID suggests, on Mineral County to track such transfers, identify successors-in-interest, or substitute and serve such successors-in-interest.

1. Rule 25(c) Governs The Substitution of Successors-In-Interest By Virtue Of Inter Vivos Transfers Of Interests From Defendants And Plainly Does Not Require Mineral County to Substitute Or Serve Any Such Successors-In-Interest

Rule 25(c) provides that: "If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party." Fed. R.Civ. Pro. 25(c). This subsection of the Rule plainly pertains to inter vivos transfers, those between a living defendant and one or more other persons or entities. As courts have consistently held: "Rule 25(c) makes plain that when a transfer of interest occurs the case continues seamlessly making substitution unnecessary." *nSight, Inc. v. PeopleSoft, Inc.*, 2006 WL 1305237, at *1 (N.D. Cal. 2006) (*quoting Kraebel*, 2002 WL 14364, at *4). Thus, "[s]ubstitution or joinder is not mandatory where a transfer of interest has occurred." *Sun-Maid Raisin Growers of Cal. v. Cal. Packing Corp.*, 273 F.2d 282 (9th Cir. 1959); *Dodd v. Pioche Mines Consolidated, Inc.*, 308 F.2d 673 (9th Cir. 1962) (affirming district court's denial of motion for substitution); *Int'l Rediscount Corp. v. Hartford Accident and Indem. Co.*, 425 F.Supp. 669, 674 (D. Del. 1977). As the leading commentator has observed:

> The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named.

7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1958, at 696 (2d ed. 1986). Thus, even where a successor-in-interest, or transferee of an

interest, seeks to be substituted into a case or where one party seeks to have the successor-in-interest to another party substituted into a case, it is not uncommon for courts to deny motions for substitution or motions challenging failure to substitute in cases involving an inter vivos transfer of a defendant's interest. *E.g.*, *In re Bernal*, 207 F.3d at 598-599; *Natural Resources Defense Council, Inc. v. Texaco Refining and Marketing, Inc.*, 2 F.3d 493, 506 (3d Cir. 1993); *Dodd*, 308 F.2d at 674; *Kraebel*, 2002 WL 14364, at *4.[1]

In this case there has been no motion to substitute and so there is no call for the Court to order substitution. What is more, a motion for substitution would have to identify the successor-in-interest, not call for another party such as Mineral County to take on the gratuitous burden of discovering some successor-in-interest and moving for that person's or entity's substitution. Defendants who have been served have the duty to keep informed of developments in the case. If a defendant transfers its interest to another person or entity and fails to inform that transferee of the pendency of this action, then the transferee may have an action for indemnification against the transferor defendant. But that is not an issue in this action, nor is it properly a concern to be imposed on either Mineral County or the Court. Once again, no genuine due process concern would be addressed by the additional, unnecessary, service requested by WRID. Rather, the result merely would be the imposition of unnecessary additional costs and delays on Mineral County to no legitimate end.

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[1] WRID's citation to *Ransom v. Brennan* for the proposition that all successors-in-interest must be substituted and served pursuant to Rule 25 is unavailing. First, *Ransom* was decided in the context of Rule 25(a). Additionally, in that case the defect was that the party requesting substitution failed to properly serve the motion on the party to be substituted. Indeed, on its face Rule 25(c) requires that a substituted party must be served. However, as noted above, Rule 25(c) does not require substitution of inter vivos successors-in-interest. Should a court choose to proceed without substitution of a successor-in-interest, no service is required and the successor-in-interest will nonetheless be bound by the decision. Thus, *Ransom* is not controlling and applies only to the question of whether a party, substituted after the death of his predecessor must be served.

While due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," "[a] construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-314 (1950). Here, due process certainly does not require that Mineral County identify, move for substitution, and serve successors-in-interest who have not bothered to move for substitution and who will be bound by the final order of the Court even in the absence of substitution.

The practical results of WRID's request would be to: (1) impose a impractical and possibly impossible obstacle in the way of Mineral County, given the frequency with which transfers of water rights occur in the Walker River basin and the fact that Mineral County has no reasonably practicable means of tracking these transfers; (2) enmesh Mineral County, the other parties, and the Court in extensive further proceedings on substitution and service that is not required under the Federal Rules of Civil Procedure; and (3) prevent the Court from reaching the merits of Mineral County's claims until some date far into the future, despite the fact that Mineral County will have completed service on all properly identified defendants in the near future. Such a result would be contrary to the interests of justice and judicial economy, and indeed to common sense. It appears that it was to avoid just such a nonsensical and impracticable situation that the Court refused to place this burden on the United States and Walker River Paiute Tribe in the C-125-B case.

2. Rule 25(a) Governs The Substitution of Successors-In-Interest By Virtue Of Death And Plainly Does Not Require Mineral County To Substitute Or Serve Such Successors-In-Interest Unless and Until A Statement Noting Death Is Served

Apart from inter vivos transfers, a served defendant's interest could pass to one or more successors-in-interest through death, as to the decedent's estate, heirs, or testamentary beneficiaries. Rule 25(a) governs such circumstances and provides, in relevant part: "If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. Pro. 25(a)(1). Because this action is in the nature of an in rem action, *Minutes of the Court* (April 1, 1997) (Judge Edward C. Reed, Jr. Presiding) (Doc. No. 99), the claim certainly is not extinguished upon a defendant's death. *See* Wright, et al., *supra*, at § 1954, 670.

Pursuant to Rule 25(a), the 90-day period for making a motion for substitution is only triggered once a party's death has been (1) formally noted, or "suggested," on the record, and (2) served on other parties and nonparty successors or representatives of the deceased. *FDIC v. Cromwell Crossroads Assocs.*, LP, 480 F.Supp.2d 516, 526-27 (D. Conn. 2007). The formal notice, or suggestion, of death that is required under Rule 25(a) is not fulfilled by the mere receipt of actual knowledge of death, but rather must identify the successor(s) who may be substituted for the decedent. 165 F.R.D. 54, 56 (E.D.N.C. 1995). *See also Grandbouche v. Lovell*, 913 F.2d 835, 836-37 (10th Cir. 1990) (running of 90-day period for filing motion for substitution not triggered unless formal suggestion of death made on record, regardless of whether parties have knowledge of party's death). If no such notice or suggestion of death is made on the record, the case may proceed to judgment with the original named parties. 4 James Wm. Moore et al., *Moore's Federal Practice* § 25.12[5], 25-20 (3d ed. 1997) (citing *Ciccone v. Secretary of Dep't of Health & Human Servs.*, 861 F.2d 14, 15 n.1 (2d Cir. 1988)).

There appear to have been no Statements of Death filed or served in this case. Therefore, the duty to move for substitution of such successors-in-interest has not been triggered. Further, it is the estate, heirs, or testamentary successors-in-interest who would have knowledge of a served defendant's death and of the identities and addresses of any proper successors-in-interest. Therefore, it is only proper to require such persons to bear the burden of filing a suggestion of death or otherwise informing the Court and the other parties of the defendant's death and successors-in-interest. It would be impracticable and inequitable to impose that burden on Mineral County because Mineral County has no practicable means of tracking the potential deaths of all defendants who have been served.

Nonetheless, Mineral County recognizes that it is of central importance that all water rights holders with claims to the Walker River or its tributaries be bound by the final decision of this Court. Therefore, Mineral County will move for substitution of the proper successor-in-interest pursuant to Rule 25(a) within 90 days should a death be noted on the record. Notably, there is no time limit on the requirement that the death be noted on the record. Fed. R. Civ. Pro. 25(a); *see also*, Wright, et al., *supra*, at § 1955, 675-677.

3. WRID's Untimely Suggestion That Mineral County Be Required To Substitute And Serve All Successors-In-Interest Because *Lis Pendens* Were Not Filed For Every Defendant When They Were Served Is Inappropriate For This Action, For The Same Reasons The Court Has Held Such A Requirement To Be Inappropriate For The 125-B Action

WRID further argues that due process requires that Mineral County be ordered to bear the burden of ensuring substitution of and service on successors-in-interest to defendants who have been properly served, on the ground that no lis pendens have been filed on served defendants in this case. However, the filing of lis pendens is not a proper requirement in a case such as this one that does not challenge title to real property. Accordingly, the Court properly has not

required lis pendens to be filed in the C-125-B case, and lis pendens are not required to be filed in state water adjudications that are analogous to these proceedings. Similarly, the suggestion that lis pendens were required to be filed in this action is simply erroneous. When confronted with essentially the same issue in the C-125-B case, the Court concluded that the burden of substitution of successors-in-interest properly is borne by the defendants in cases such as these, just as defendants bear that burden in analogous water rights adjudications. *See 2 Waters and Water Rights*, § 16.02(b), at 16-15 (Robert E. Beck ed. 1991). In accord with the requirements and approach under Rule 25(c), therefore, the Court required a party in the C-125-B case who transfers ownership of all or a portion of any water right, "within sixty days after any such change in ownership, [to] notify the Court and the United States of the change in ownership." *Order Regarding Changes in Ownership of Water Rights*, at 2-3 (C-125-B Doc. No. 207). Again following a procedure much like that already provided for under Rule 25, the transferor must provide the name and address of the party who sold or conveyed ownership, the name and address of the person or entity who acquired ownership, and a copy of the deed, court order, or other document by which the change in ownership was accomplished. *See id.*, at 2-3.

WRID also attempts to support its argument that Mineral County be required to engage in extraordinary additional service by suggesting that there may be claimants of water rights in the Walker River system who have no idea that this suit is pending. That suggestion is simply implausible. The existence of this case has been open and notorious news throughout the Walker River basin since it was filed. Throughout its pendency this action routinely has been the subject of an immense amount of bellicose rhetoric in the Mason Valley News, and of concerted, hostile, organizing and publicity efforts on the part of upstream water rights claimants. This litigation has been the subject of heated, ongoing public debate throughout the basin. Further, the

conspicuous, and sometimes necessarily intrusive, efforts of Mineral County and the United States and Walker River Paiute Tribe to effect service in both the 125-B and 125-C cases over many years have kept this litigation continuously present in the minds of claimants to water rights in the Walker River basin. Therefore, it is highly unlikely that there is any water rights holder in the basin who is unaware of the litigation. Nonetheless, as an added precaution, Mineral County proposes to publish notice of the pending litigation once a year, following the completion of service, in the appropriate newspapers in the Walker River basin, mirroring the practice suggested by the United States and Walker River Paiute Tribe in the C-125-B case and the practice in both Nevada and California adjudications.

Despite the foregoing, should the Court determine that successors-in-interest should be brought into this case, Mineral County suggests that the Court issue an order establishing a procedure like that implemented in the C-125-B case. The Court also should order any served defendants who already have transferred interests to file and serve a notice updating the Court and the parties within a time period such as 60 or 90 days of the Court's order. For those people who have not yet been served, Mineral County could include in the service packet a similar form to the disclaimer of interest form used in C-125-B.

C. Mineral County Already Has Proposed To Serve The Intervention Documents On Claimants Who Have Not Yet Been Served And Submits The Following Plan Of Action To The Court

As reflected in the Service Report, Mineral County always has proposed to serve those parties who have not yet been served. Accordingly, the County does not object to WRID's list of parties who still need to be served, and therefore has attached WRID's Exhibit 1 – listing the parties who remain to be served – to this Reply as Exhibit 6 with the following amendments. The numbering for Gregory Burton Adams has been corrected from Exhibit E-1 to Exhibit E-2.

See Exhibit 6. Additional trustee information and corrected names of trusts has been included where appropriate. *See* Exhibit 6. Several parties have been deleted from the list in accord with WRID's comments on Exhibit E to the Service Report. *See infra*, Section V; Exhibit 6.

Once the issues addressed in this latest round of briefing are decided by the Court, Mineral County intends to submit to the Court for approval its service packet, as well as an updated notice in Lieu of Summons to be issued by the Court. Once the Court issues an updated notice in lieu of summons and approves the service packet, Mineral County will serve the remaining list of proposed defendants. Mineral County anticipates that service on the remaining un-served defendants will take no more than several months from when the Court rules on the issues raised in the Service Report, WRID's Response, and this Reply.

D. <u>Response To WRID's Specific Comments On Status of Proposed Defendants Listed In The Service Report For Whom Service Has Not Yet Been Ratified</u>

WRID commented on the status of service for a limited number of parties included in Exhibit E to the Service Report. In response to WRID's comments, Mineral County has updated that Exhibit and attached it to this filing as Exhibit 1. The County also has amended the lists of people and entities to be dismissed and added to this case, which are attached to this filing as Exhibits 2 and 4, respectively. As noted above, Mineral County also has attached a separate comprehensive list of the persons and entities that remain to be served, as Exhibit 6. Mineral County's response to WRID's comments on the status of service on specific individuals and entities is as follows:

E-10 - John R. Hargus and Adah M. Blinn Trust, Robert Lewis Cooper, Trustee:

Mineral County agrees with WRID's assessment and agrees that the Trust should be dismissed from the case. Furthermore, Richard Leroy Cooper should not be added to the caption. Mineral County has updated this information in Exhibits 1 and 6 to this Reply.

E-32, 33, and 34 – Arden, Evilo J. and Josephine A. Gerbig:

Mineral County retracts its request that Angela Gerbig be added, as this request appears to be in error. Mineral County has updated Exhibit 1 to this Reply accordingly.

E-64 – Marvin & Lynn Peterson Trust, Marvin F. & Lynn M. Peterson, Co-Trustees:

Mineral County agrees with WRID's assessment and agrees that William and Sherri Merriwether should be dismissed from the case. This request for dismissal is reflected in Exhibit 2 to this Reply. In the Service Report, Mineral County requested that the Court clarify that service ratified on the Peterson Trust on June 18, 2002, was in fact ratification of service on the Marvin & Lynn Peterson Trust. Mineral County's search of county records has not yielded information on any "Peterson Trust." Mineral County is confident that the ratification of service on the "Peterson Trust" was in error. Therefore, Mineral County requests that the Court dismiss both the Marvin & Lynn Peterson Trust and the Peterson Trust from the caption, add the Louis and Erma Flasko Family Trust, as successor-in-interest to the Marvin & Lynn Peterson Trust, to the caption, and order service on the Louis and Erma Flasko Family Trust, as requested in Exhibit 1 to this Reply. These dismissals and the addition are reflected in Exhibits 2 and 4 respectively. The addition of the Flasko Trust is also reflected in Exhibit 6.

E-74 – Sario Livestock Company:

Mineral County has included the return of service establishing service on Mrs. Presto on behalf of Sario Livestock Company, attached hereto as E-74 and included as a supplement to Exhibit E-74 of the Service Report.

E-83 – Paul S. Silva:

In response to WRID's comment, Mineral County requests that Dorthella A. Silva also be dismissed from the case. Mineral County has updated Exhibit 1 of this Reply to reflect this request for dimissal. The request for dismissal also is reflected in Exhibits 2 and 6.

E-104 – Mildred A. Watkins:

Mineral County has attached documentation of Mildred A. Watkins' death as Exhibit E-104 of this Reply, supplementing Exhibit E-104 of the Service Report. Ms. Watkins was Louis Watkins' joint tenant. Mineral County requests that the Court dismiss Mildred A. Watkins and Louis Watkins and add and order service on Coale Robert Johnson, their successor-in-interest. Mineral County has updated Exhibit 1 to this Reply accordingly. This requested dismissal also is reflected in Exhibits 2 and 6, and the requested addition is reflected in Exhibits 4 and 6.

E-108: Gilbert C. Wedertz:

Mineral County informed the Court in the Service Report that it would provide successor-in-interest information for Gilbert Wedertz when obtained. Since that filing, the County's investigator has attempted to complete the title search on the properties involved in the estate, of which there appear to be many. As of this filing, that search is not yet complete. The Recorder's Office for Mono County has indicated that the files involved have either been lost or are in storage. The investigator is continuing to attempt to obtain those files, but if he finds that they are indeed lost, Mineral County may move for publication at a future date. Mineral County proposes to update the Court and move for substitution of Mr. Wedertz's successors-in-interest or for publication, as appropriate, when that search is complete.

E-112 – Gerald Lee Wymore

Mineral County retracts its request to add Terry Gene and Margaret Hawkins as they are already in the caption. Mineral County has updated Exhibit 1 to this Reply accordingly. This retraction is reflected in Exhibits 4 and 6.

CONCLUSION

Mineral County respectfully requests that the Court issue an order:

(1) approving the caption submitted as Exhibit C to Mineral County's August 29, 2008, Service Report and confirming the accuracy and validity of that caption;

(2) dismissing parties as requested in Mineral County's August 29, 2008, Service Report and in Section V and Exhibits 1 and 2 of this Reply;

(3) approving the corrections to the caption reflected in Exhibit 3 of this Reply;

(4) substituting parties as requested in Mineral County's August 29, 2008, Service Report and in Section V and Exhibits 1 and 4 of this Reply;

(5) ratifying service on other parties as requested in Mineral County's August 29, 2008, Service Report and Exhibit 5 of this Reply;

(6) confirming that Exhibit 6 of this Reply represents the final list of parties that remain to be served;

(7) ordering service on proposed defendants listed in Exhibit 6 of this Reply;

(8) ordering that Mineral County is not required to make any further service on parties who already have been validly served and for whom the Court has already ratified service;

(9) finding that the estate and successors-in-interest of a deceased party bear the burden of filing and serving a Notice of Death pursuant to Rule 25(a) in the event of a the party's death;

(10) clarifying certain matters as requested in Exhibits E-69, and E-80 of Mineral County's August 29, 2008, Service Report; and

(11) providing any further guidance relating to service efforts the Court deems necessary.

Mineral County is not submitting a revised proposed order with this filing due to the number of issues raised in the August 29, 2008, Service Report, WRID's Response to that Service Report, and this Reply to WRID's Response that can best be resolved after a hearing. Mineral County therefore requests a hearing to address the issues raised in this latest round of filings on service in the C-125-C action.

Dated: January 23, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this January 23, 2009, I electronically filed the foregoing **MINERAL COUNTY SERVICE REPORT REPLY** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via their email addresses:

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I further certify that I served a copy of the foregoing **MINERAL COUNTY SERVICE REPORT REPLY** on the following non-CM/ECF participants by U.S Mail, postage prepaid, this 23rd day of January, 2009:

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